

***United States Court of Appeals  
for the  
District of Columbia Circuit***



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RECORD**





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**Court of Appeals, District of Columbia**

**OCTOBER TERM, 1909.**

**No. 2061.**

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**669**

**ABE KING, APPELLANT,**

*vs.*

**MICHAEL HARRINGTON AND LORENZO A. BAILEY,  
TRUSTEE.**

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**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA**

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**FILED SEPTEMBER 14, 1909.**

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OF THE CITY OF NEW YORK**



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1909.

No. 2061.

ABE KING, APPELLANT,

vs.

MICHAEL HARRINGTON AND LORENZO A. BAILEY,  
TRUSTEE, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

	Original.	Print.
Caption .....	a	1
Bill.....	1	1
Affidavit of Albert Harper.....	8	5
Exhibit A. K. No. 1—Promissory note.....	10	6
Affidavit of William M. Slater.....	11	6
Exhibit A. K. No. 2—Deed from Harrington to Bailey.....	12	7
Certificate of notary.....	19	11
Exhibit A. K. No. 4—Letter from L. A. Bailey to M. Harrington.	21	11
Exhibit A. K. No. 5—Letter from Darr, Peyser & Taylor to L. A. Bailey.....	22	11
Order to show cause.....	24	12
Marshal's return.....	24	13
Answer of defendant Bailey.....	25	13
Answer of Michael Harrington to rule .....	26	14
Appearance of Crandal Mackey for complainant.....	40	21
Replication.....	41	22
Amendment to answer of M. Harrington.....	41	22
Cross-bill.....	44	23
Order appointing receivers.....	47	25
Motion to vacate decree.....	49	26

	Original.	Print.
Affidavit of Lorenzo A. Bailey.....	51	27
Crandal Mackey.....	53	29
M. Strasburger.....	56	30
Charles W. Darr.....	59	32
Jos. Salomon.....	63	34
L. A. Bailey.....	64	35
Order of court .....	65	35
Appeal.....	67	36
Memorandum : Appeal bond filed ; time to file transcript of record extended.....	68	36
Docket entries.....	69	37
Order to clerk for preparation of transcript on appeal.....	71	38
Clerk's certificate.....	73	39



# In the Court of Appeals of the District of Columbia.

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No. 2061.

ABE KING, Appellant,  
vs.  
MICHAEL HARRINGTON et al.

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*a* Supreme Court of the District of Columbia.

In Equity. No. 28416.

ABE KING, Complainant,  
vs.  
MICHAEL HARRINGTON, LORENZO A. BAILEY, Trustee, Defendants.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to-wit:

1 *Bill.*

Filed Mar. 24, 1909.

In the Supreme Court of the District of Columbia.

In Equity. No. 28416.

ABE KING, Complainant,  
vs.  
MICHAEL HARRINGTON, LORENZO A. BAILEY, Trustee, Defendants.

To the Supreme Court of the District of Columbia holding an Equity Court the complainant states as follows:

1. The complainant and each of the defendants is a citizen of the United States and a resident of the District of Columbia.

2. The complainant brings this suit in his own right; the defendant Harrington is herein sued in his own right; the defendant Bailey is herein sued as Trustee under that certain deed of trust hereinafter mentioned.

3. The defendant Harrington is now and has been ever since sometime prior to the 31st day of October, 1908, the lessee of the premises and place of business known as and being No. 200 B Street Northwest, in the city of Washington, District of Columbia, and proprietor of a bar room business and also a hotel business there conducted by him under licenses duly granted and issued to him and owner of the personal property mentioned in said deed of trust.

2        4. On the date last aforesaid the defendant Harrington was indebted to the complainant in the sum of \$1700. represented by said Harrington's seventeen promissory notes dated July 1, 1907, then held by the complainant and also in the further sum of \$800. represented by said Harrington's other promissory note dated October 31, 1907, then held by the complainant and also in the further sum of \$489.98 on an open account with Records and Goldsborough which they had duly assigned to the complainant and also in the further sum of \$800. for cash then loaned by the complainant to said Harrington at his request to enable him to pay the fee required by law for the renewal of his said bar room license for the year then next ensuing and also in the further sum of \$25.00 for certain expenses then incurred by the complainant at the request of said Harrington, and the said Harrington in consideration of said indebtedness and the cancellation of the promissory notes aforesaid which were then duly cancelled, then made his certain other promissory note dated October 31, 1908, for the sum of \$3814.98 being the aggregate sum of all said indebtedness, payable on demand to the complainant or order with interest, payable monthly, at the rate of six per centum per annum, which said note is here shown to the Court and a copy thereof, marked Exhibit A. K. No. 1 is filed herewith and made part of this bill of complaint.

5. The complainant is the owner and holder of said note for \$3814.98 on account whereof the said Harrington has paid on December 21, 1908, the sum of \$100 and on January 18, 1909 the further sum of \$50. and no more. On the 12th day of March 1909 the said note was duly presented to said Harrington and payment thereof duly demanded of him, but he failed and refused to pay the same, and the same was dishonored and protested and on account of said note the said Harrington is now indebted unto the  
3        complainant in the full sum of \$3814.98 with interest as aforesaid together with \$1.75 for costs of protest, less the sum of \$150. paid on account thereof as aforesaid.

6. The said Harrington at the time of making said note for \$3814.98 duly made and delivered and on November 3, 1908, duly acknowledged a certain deed of trust dated October 31, 1908, which was on November 3, 1908, duly recorded in the Land Records of the District of Columbia, to wit, in Liber No. 3196 at folio 30, and the same is here shown to the court, and a copy thereof, marked Exhibit A. K. No. 2, is filed herewith and made part of this bill of complaint, and thereby conveyed to the defendant Bailey, Trustee, the licenses, business, lease and other personal property aforesaid and in said deed of trust more particularly mentioned.

7. In and by the said deed of trust the said Harrington agreed



among other things to continue to carry on said business to keep said property insured to the amount due on said note and assign such insurance to said trustee as part of the security for said indebtedness, and to pay said note and all rent for said place of business and the expense of maintaining said business and to keep a record of all receipts and disbursements, sales and purchases, in said business and account therefore to said trustee in such manner and at such times as said trustee may elect and keep the stock in trade in said bar room business replenished and maintain the same in said place of business at a valuation of not less than \$300. and after deducting from said receipts the actual and necessary expenses, paid by him in and about

the maintenance of said bar room and hotel business including also the expenses of making said sales and of keeping said stock replenished as aforesaid to pay over the remainder of said receipts to be credited on said note and that failure to pay said note on demand or to comply with any of his agreements contained in said deed of trust would constitute a default thereunder, and that in case of any such default the said trustee, after notice thereof, shall take possession of and sell all and singular the licenses, business and other property aforesaid, excepting only stock in trade before that time sold and removed from said place of business in the proper and ordinary course of said business and apply the proceeds of such sale, or so much thereof as required, after payment of proper costs and expenses in and about the execution of said trusts, to the payment of said note and also any other indebtedness of said Harrington to the complainant not exceeding \$500. and to pay the surplus, if any, to said Harrington or his assigns; for a more full and particular showing of the terms of said deed of trust reference thereto is hereby made.

8. At the date of said deed of trust the said Harrington agreed orally with the complainant that the said Harrington would from day to day deposit all the receipts of said business in bank in the name of Harrington & Co. subject only to checks, to be signed by the complainant, for the payment firstly of the current expenses of said business and secondly on account of said note. During the period commencing November 2, 1908, and ending March 1, 1909, the said Harrington under said oral agreement, deposited in bank the sum of \$1374.03 and no more all which excepting only the sum of Nine dollars and thirty-nine cents has been paid out by checks, signed as aforesaid, in payment of current expenses together with \$150. credited on said note as aforesaid; a statement of which said deposits and payments marked Exhibit A. K. No. 3, is filed herewith and made part of this bill.

9. On March 5, 1909, the said trustee by letter, a copy whereof marked Exhibit A. K. No. 4, is filed herewith and made part of this bill, requested the said Harrington to account for said receipts and disbursements as required by said deed of trust to which the said Harrington, by letter signed by his attorneys, dated March 6, 1909, a copy whereof marked Exhibit A. K. No. 5, is filed herewith and made part of this bill, replied refusing to comply with said request, and he has wholly failed so to account excepting statements made by him

for the period commencing November 2, 1908, and ending February 13 1909, omitting the week ending January 23, 1909, in which statements he admits receipts amounting to \$1576.74 and claims credit for \$612.87 which he alleges he paid out on account of current expenses of said business.

10. The complainant is informed and believes and so avers that the said Harrington is wholly insolvent; that he has incurred large indebtedness in and about said business including rent and for supplies and on other accounts now overdue and unpaid; that he has received before and particularly since March 1, 1909, large sums of money in said business which he has not deposited under said oral agreement and for which he has not accounted to said trustee, but intends to retain the same for his own use contrary to the terms of said deed of trust; that by reason of his default in payment of said rent he will be forthwith ejected, by his lessor, from said place of business and the security sought to be effected by said deed of trust

6 will be wholly destroyed except by the interposition of a receiver to be appointed by this court; that he has thereby failed and is in default under said deed of trust and also in the particulars hereinafter stated, that is to say he has failed to effect, maintain or assign insurance as aforesaid, or to pay said note, and rent and the expense of the business aforesaid, or to account to the trustee as aforesaid or to relinquish and maintain the stock in trade as aforesaid and that said stock in trade is wholly exhausted.

11. After and because of such defaults the complainant requested said trustee to take possession of said business, licenses, lease and property and sell the same under said deed of trust but the said trustee, although willing, declines so to do for the reason assigned by him, and which the complainant believes to be true, that the said trustee is unable to obtain such possession without the aid of this court and that if he should obtain such possession without the aid of this court he would be without authority to continue said business pending a sale to the great injury of the security sought to be afforded by said deed of trust and for other good reasons.

12. The oral agreement mentioned in paragraph 8 of this bill was intended by the parties thereto as a means to secure the application of the receipts of said business in accordance with said deed of trust and was in continuation of a previous arrangement between said parties which had continued ever since the 5th day of July, 1907, for the better protection of this complainant as a creditor of said Harrington during all said period. The said Exhibit A. K.

7 No. 3, sets forth all deposits and all checks against said deposits since the date last aforesaid; all which said checks were drawn to make payments approved by said Harrington.

13. The said Harrington is indebted to this complainant in the full sum of \$3967.02, as set forth in the statement marked Exhibit A. K. No. 6, filed herewith and made part of this bill of complaint, all which is sought to be secured by said deed of trust.

Wherefore this complainant prays as follows:

1. That process issue requiring the defendants Michael Harrington and Lorenzo A. Bailey, Trustee, to appear herein and abide by



the exigency of this bill of complaint, and requiring the said Harrington to answer this bill and fully disclose under oath the total amount of all moneys received by him in and about said business since the 31st day of October, 1908.

2. That an accounting be had under the direction of this court of all the receipts of said business since the date last aforesaid and that all such receipts which have since that date come into said Harrington's hands and not already applied as required by said deed of trust be so applied by him under the direction of this court.

3. That this court appoint some suitable person as receiver to take charge of said business and of the place of business, lease, licenses and other property aforesaid and covered by said deed of trust and to sell the same and pending such sale to conduct said business, all under the direction of this court, and that the proceeds of such sale and of said business or so much thereof as may be required be applied to the payment of this complainant's claim and the indebtedness due him as aforesaid and that the surplus  
8 thereafter, if any, be applied as provided in said deed of trust.

4. That such other and further relief be granted to this complainant as the nature of the case in equity may require.

ABE KING, *Complainant*.

LORENZO A. BAILEY,  
*Solicitor for Complainant.*

DISTRICT OF COLUMBIA, ss:

I, Abe King, do solemnly swear that I have read the foregoing bill of complaint by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those therein stated upon information and belief, I believe to be true.

ABE KING.

Subscribed and sworn to before me this 22d day of March, A. D. 1909.

[SEAL.]

J. WM. SHEA,  
*Notary Public, D. C.*

DISTRICT OF COLUMBIA, ss:

I, Albert Harper, on oath say, that I am a Notary Public in and for the District of Columbia, that as such Notary Public, on the 12th day of March, 1909, Friday, I made demand upon Michael Harrington, at his place of business, No. 200 B Street, Northwest, in the city of Washington, District of Columbia, for payment of his note dated October 31, 1908, for the sum of \$3,814.98, payable on demand to Abe King, or order, with interest, payable monthly, at  
9 the rate of six per cent per annum, which note I then and there showed and presented to the said Michael Harrington for payment thereof, to which the said Michael Harrington

responded "That note has been paid," said demand for the payment of said note being made by me at the request and on behalf of the said Abe King, the holder of said note; that thereupon, at the request of Lorenzo A. Bailey, the trustee named in the deed of trust securing the payment of said note, I informed the said Harrington that the said Bailey, as trustee, desired to know whether or not the said Bailey should take possession under the said deed of trust, and whether or not said Harrington, at the request of said Bailey, trustee, would surrender possession to said trustee; to which the said Harrington then responded, "No, we will go into court about this thing, and you will have to see my lawyer, Charles W. Darr."

The foregoing is the substance and effect of all that was said on that occasion, excepting only that the said Harrington, in refusing payment of said note, stated also, in effect, that all the receipts of the business, (referring to the business mentioned in the said deed of trust), since July, 1907, had been turned over to Mr. King, referring to the said Abe King; and that although he had kept an account of the proceeds of the business, he would not furnish such an account until he had first received a statement thereof from the said King.

ALBERT HARPER.

Subscribed and sworn to before me this 13th day of March, 1909.

[SEAL.]

ARTHUR R. COLBURN,

*Notary Public, D. C.*

10

EXHIBIT A. K. No. 1.

\$3,814.98.

WASHINGTON, D. C., *October 31, 1908.*

On demand after date, for value received, I promise to pay to Abe King or order, the sum of Three thousand Eight hundred and Fourteen and 98/100 Dollars, at ——— with interest at the rate of six per centum per annum until paid; said interest payable monthly.

MICHAEL HARRINGTON,

*Address, 200 B St. N. W.*

No. 1 of 1 Due on demand.

(N. B.—Retain this note after payment and Produce it when a release is obtained.)

On Margin of Note:

Secured by deed of trust—chattels in 200 B St. N. W., Washington, D. C. Lorenzo A. Bailey, Trustee.

11

DISTRICT OF COLUMBIA, ss:

I, William M. Slater, of the city of Washington, D. C., on oath say, that on Friday, the 12th day of March, 1909, I accompanied Albert Harper to the place of business of Michael Harrington, No. 200 B Street, Northwest, in the city of Washington, D. C., and was present at a conversation then and there had between the said Harper



and the said Harrington: that I have read the foregoing affidavit of the said Albert Harper hereto attached, and know the contents thereof, and the statements therein contained are true, and that I adopt the same in this my affidavit.

WILLIAM M. SLATER.

Subscribed and sworn to before me this 13th day of March, 1909.

[SEAL.]

ARTHUR R. COLBURN,  
*Notary Public, D. C.*

12

EXHIBIT A. K. No. 2.

This Deed made this thirty first day of October, A. D. Nineteen hundred and eight by and between Michael Harrington, (unmarried) of the city of Washington in the District of Columbia, party of the first part, and Lorenzo A. Bailey, of the same place, Trustee, party of the second part, Witnesseth, That Whereas, the said Michael Harrington, who is hereinafter designated as the "grantor," is indebted unto Abe King in the sum of Three thousand eight hundred and fourteen and 98/100 Dollars (\$3814.98) and in evidence thereof has made his certain promissory note of even date herewith for said sum payable on demand to the said Abe King or order with interest at the rate of six per centum per annum until paid and desires hereby to secure payment of said note and the performance of the several agreements hereinafter stated on his part to be performed Now Therefore, the said party of the first part, in consideration of the premises and of One dollar to him in hand paid the receipt whereof is hereby acknowledged, does hereby grant, bargain and sell, assign and convey and herewith deliver unto the said Lorenzo A. Bailey, Trustee, all and singular the licenses, applications, deposits and other property and rights hereinafter mentioned, that is to say. (1) That certain Bar room license by the Excise Board, of the District of Columbia heretofore granted to and now held by the said grantor at the place of business known as No. 200 B Street Northwest, in the city of Washington, aforesaid, and also the Hotel license and all other licenses there held by him, including also all renewals, extensions and transfers thereof, and every application of the said grantor now or hereafter to be pending before said Excise Board for the renewal, extension, transfer or allowance of any such license and every sum of money now or hereafter to be on deposit with any official or employee of said District with or in reference to any such application and also all other rights and privileges, under, pertaining to or by reason of every such license, together with the business conducted under every such license and the good will of said business, and (2) The lease now held by the said grantor for said place of business and all his rights as tenant of said place of business and of every part of the building and premises where said place of business is situate including also every renewal and extension of the present and every future lease and tenancy held by him, and (3) All and singular the counters, shelving, mirrors, chairs, tables, pictures, safe, cash registers, beds, bedding,

13

bureaus, washstands, and pianos now situate at said place of business and all wines, liquors, cigars, and other stock in trade and paraphernalia and equipment of said business and all other fixtures and property there situate, and (4) all stock in trade and other property to be hereafter brought into said place of business in substitution or renewal of such as shall be sold or otherwise disposed of as hereinafter provided; to have and to hold the same in Trust as follows: To suffer and permit the said grantor and his assigns until default by him or them hereunder, to carry on said business under every such license and make lawful use of the licenses, and other property and rights aforesaid, including also the sale of all stock in trade now

and hereafter to be in said place of business and the proceeds  
 14 thereof to have and apply as hereinafter provided and upon the full performance of all agreements herein stated on his part to be performed, then the said Trustee shall reconvey the said licenses and other property and rights aforesaid to the said grantor or his assigns and fully release him and them from further duty or liability hereunder, all at his or their cost; And upon and at any time after default in the payment of said note or in the performance by the said grantor of any of the said agreements on his part to be performed and after notice to the said Trustee of such default, the said Trustee shall take possession of and shall sell, at public or private sale, at such time or times place or places, for such prices and upon such terms, and after such notice of sale, as the said Trustee shall deem reasonable, all and singular the licenses, leases, business, applications, deposits and other property and rights aforesaid, where-soever the same shall be found, excepting only such stock in trade as shall have been before that time sold and removed from said place of business in the proper and ordinary course of said business, and shall convey and deliver the same to the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money after payment thereof to the said Trustee, *Provided*, That if, at the time of such default or thereafter money be on deposit with or in reference to said application or applications of the grantor as aforesaid, the said Trustee may either take such money hereunder and abandon such applications in the name and on behalf of said grantor or he may sell and convey all the rights, interests and privileges of said grantor in, under, to and by reason of such applications and deposits, as the said Trustee may elect; And the  
 15 said Trustee shall apply the proceeds of such sale and sales and all moneys received by him hereunder, as follows: viz:

(1st) To pay all proper expenses of such sales and in and about the preservation of the security hereby intended to be given and in and about the execution of these trusts, including also a reasonable attorney's fee not exceeding \$100, and also, as compensation for his services as such Trustee, five per centum of all moneys which shall come into his hands hereunder, and (2d) Out of the surplus thereafter remaining, if any there be, he shall pay whatever then remains unpaid on said note, and (3d) Out of the surplus thereafter remaining if any there be, he shall pay all the indebtedness of the said grantor to the said Abe King, not exceeding Five hundred dol-



lars, and (4th) He shall pay the surplus thereafter remaining, if any there be, to the said grantor or his assigns. And upon the considerations aforesaid the said grantor agrees with the said Trustee as follows: (1) That the said grantor shall keep his said licenses and every license aforesaid in force and from year to year renew the same and shall not less than thirty (30) days next preceding the expiration of each license year, make the necessary application to and deposit with the proper authorities of said District to secure the renewal of every such license for the term of the license year then next ensuing; (2) That the licenses and other property and rights aforesaid shall not, in whole or in part, without the consent of said Trustee in writing first had and obtained, be transferred from place to place or from person to person, excepting only as to

16 sales in the ordinary course of business as herein provided;

(3) That all said property that shall be insurable against fire shall be kept so insured by the grantor to the amount due hereunder and in such company and form as the said Trustee shall designate and such insurance assigned to said Trustee as part of the security for said indebtedness; (4) That said grantor shall pay the premiums and all expenses of such insurance and shall also pay said note and all rent for said place of business and expenses for said licenses and the maintenance of said business and all proper costs, charges, and commissions aforesaid; (5) That until default as aforesaid the grantor shall continue to conduct said bar room and hotel business, and keep a record of all receipts and disbursements, sales and purchases and all his transactions, with vouchers for all such disbursements, in and about said business and shall account therefor to the said Trustee in such manner and at such times as the said Trustee may elect, and shall at all times keep the stock in trade in said bar room business replenished and maintain the same in said place of business at a valuation of not less than \$300 and from time to time, for portions of said stock in trade as shall be sold in the ordinary course of said business, including present and future stock in trade, provide and bring into said place of business other like goods in substitution, hereunder and for the uses of said business of the goods thus sold, and after deducting from said receipts the actual and necessary expenses, paid by him, in and about the maintenance of said bar room and hotel business, including also the

17 expenses of making said sales and of keeping said stock replenished as aforesaid he shall pay over the remainder of said receipts to be credited on said note; it being understood

by the parties hereto that the said indebtedness was created by the grantor to enable him to establish and maintain said business and that he is without means to pay said note except out of the proceeds of said business, and that the true intent and purpose of the agreements herein contained are to effect the payment of said note as soon as practicable without destroying said business; but without prejudice to the rights of the holder of said note in case of default by the said grantor hereunder (6) That the said grantor shall make every other and further conveyance and delivery as the said Trustee shall require to effect the true intents and purposes of this instrument and in case he shall refuse or fail upon request so to do then

the said Trustee may do so in the name and on behalf of the said grantor and his attorney in fact; (7) That the word "Trustee" wherever it appears herein shall include the said Lorenzo A. Bailey and his assigns and every duly substituted Trustee hereunder; (8) That the word "grantor" wherever it appears herein shall include the said Michael Harrington, his executors, administrators and assigns except as herein otherwise specifically provided; (9) That the word "Board" wherever it appears herein shall include the said Excise Board and every officer, board, or person for the time being charged with duties of granting, renewing or extending bar room, hotel or other licenses in said District; (10) That every bar room license hereafter held by said grantor as a renewal, extension or continuation of or substitution for, the license now held by him as

18 aforesaid, or otherwise obtained by him, shall be considered and held by him hereunder as an extension of the term of his said present license and that the word "license" wherever it appears herein shall include every such license together with the business conducted thereunder and the good will of such business; (11) That the word "lease" herein shall include all the grantor's present and future right of possession of the entire building and premises where said place of business is situate whether by written or by oral agreement or by new lease or by extension or renewal of the present lease or otherwise; (12) That all wines, liquors, cigars and other goods brought into said place of business for sale in said business, shall be considered stock in trade and subject to the lien hereby created; (13) That the said grantor shall maintain the equipment and paraphernalia of said bar room and hotel business at not less than its present value and utility and that all articles hereafter brought into said place of business in renewal of or substitution for portions of the present equipment and paraphernalia aforesaid shall be subject to the lien hereby created; (14) That failure to pay said note on demand or to comply with any of his agreements herein contained on the part of said grantor to be performed shall constitute a default hereunder; (15) That failure to enforce any agreement herein contained shall not constitute a waiver of such agreement. It is further agreed by the parties hereto and all persons interested or to be interested herein or hereunder, that the said Trustee

19 shall not be held liable for any act of omission or commission hereunder excepting only willful neglect or failure to perform his duties hereunder when thereunto requested by some person interested herein or hereunder.

And the said grantor hereby appoints the said Lorenzo A. Bailey the true and lawful attorney in fact of him, the said grantor, irrevocably, with full power and authority in the name and on behalf of said grantor to make every such conveyance, transfer, acquittance and delivery of all and singular the licenses, leases, applications, deposits, privileges, business and property aforesaid as may be necessary to effect or consummate every such sale or otherwise to effect the true intents and purposes of this instrument; Hereby ratifying all that the said attorney shall lawfully do or cause to be done by virtue hereof.



In testimony whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

MICHAEL HARRINGTON. [SEAL.]  
LORENZO A. BAILEY, [SEAL.]  
*Trustee.*

DISTRICT OF COLUMBIA, ss:

I, Wm. F. Columbus, a Notary Public in and for the District of Columbia, do hereby certify that this day in said District, Michael Harrington, who is personally well known to me and party to the foregoing deed hereto attached bearing date the 31st day of October, A. D. 1908, personally appeared before me and acknowledged the said deed to be his act and deed.

Witness my hand and Seal this 3d day of November, A. D.  
20 1908.

[SEAL.]

WM. F. COLUMBUS,  
*Notary Public, D. C.*

21

EXHIBIT A. K. No. 4.

MARCH 5, 1909.

Mr. Michael Harrington, #200 B street N. W., Washington, D. C.

DEAR SIR: The deed of trust dated October 31, 1908, in which you are named as grantor and I am named as Trustee, concerning your bar room and hotel business at the address above stated, provides that the grantor shall "keep a record of all receipts and disbursements, sales and purchases and all his transactions, with vouchers for all such disbursements, in and about said business and shall account therefor to the said Trustee in such manner, and at such times, as the said Trustee may elect."

Accordingly, I have elected and now request that you account to me as follows: On each Monday, commencing on the 15th instant, that you send me an itemized statement of all such receipts and disbursements during the preceding week and that on Monday next, 8th inst., by ten (10) o'clock a. m. you send me such statement for the entire period commencing on October 31, 1908, and ending at the close of business on Saturday, 6th inst., including in every such statement the amount each day of all receipts and disbursements and stating separately the amount due and remaining unpaid for purchases and to whom due.

Very respectfully,

LORENZO A. BAILEY.

22

EXHIBIT A. K. No. 5.

MARCH 6, 1909.

Lorenzo A. Bailey, Esq., Columbian building, city.

DEAR SIR: Mr. Michael Harrington of 200 B Street, N. W., has handed us your favor of March 5th, 1909, and requested that we write or see you in relation thereto.

Mr. Harrington is ready and willing to carry out all of the terms and provisions of the trust, but informs us that Mr. Abraham King, representing the Arlington Brewing Company, which company Mr. King claims is a partner in the business, has disbursed all of the money received from the business from October 31, 1908, it being the method of Mr. Harrington to deposit the money in the bank, which money was subject only to the order of the Arlington Brewing Company, through Mr. King or by Mr. King's personal order, and, we have this day requested the Arlington Brewing Company to render an account, and also requested Mr. King to do likewise, covering the period mentioned in your letter.

Mr. Harrington refuses to continue this arrangement which was begun without his consent, but which he was compelled to follow upon threats made that otherwise the business would be closed up.

Our Mr. Darr will endeavor to see you on Monday with the hope that you and he may be able to straighten out whatever may appear to be the difficulty in the premises. He will see you on Monday, March 8th, 1909, provided he is not confined to the house as he has been for several days, and, if he does not see you on Monday you will know that he is not physically able to attend to any business, and we will ask you not to make any move in the premises until he can confer with you.

We hope by that time to have the account from the corporation, who alone can make the accounting you demand.

Yours truly,

DARR, PEYSER & TAYLOR.  
Per C. W. DARR.

CWD. S.

24

*Order to Show Cause.*

Filed Mar. 24, 1909.

In the Supreme Court of the District of Columbia.

In Equity. No. 28416.

ABE KING, Complainant,

vs.

MICHAEL HARRINGTON and LORENZO A. BAILEY, Tr., Defendants.

Upon the motion of counsel for the complainant, it is by the court this 24th day of March, A. D., 1909, Ordered, that the defendants, Michael Harrington and Lorenzo A. Bailey, Trustee, be and appear in this court at 10:00 o'clock A. M. on the 26th day of March A. D., 1909, and show cause, if any they have, respectively, why a receiver should not be appointed as and for the purposes prayed in the bill of complaint, and such other order made as to the court shall seem proper; provided that a copy of this order be served on each of the said defendants on or before the 25th day of March, A. D., 1909.

JOB BARNARD, *Justice.*



*Marshal's Return.*

Served copy of within rule to show cause on Michael Harrington personally.

March 24, 1909.

AULICK PALMER, *Marshal*.  
S.

25

*Answer of Defendant.*

Filed Mar. 31, 1909.

In the Supreme Court of the District of Columbia.

No. 28416. In Equity.

ABE KING

VS.

MICHAEL HARRINGTON et al.

Lorenzo A. Bailey, Trustee, one of the defendants named in this suit answering the rule to show cause herein issued and also the bill of complaint herein filed says that he is informed and believes and so admits and avers that the statements contained in said bill of complaint are true; that he is and ever has been ready, able and willing to perform his duties in all respects as specified in the deed of trust mentioned in said bill excepting only so far as his ability to perform the same has been and is obstructed by the defendant Harrington who has refused and refuses to permit this defendant to take possession of the business and property as provided in said deed of trust; that this defendant has no interest in the subject matter of this suit except as such trustee and he desires the aid of this court in the execution of said trusts and submits all his interests in and about the subject matter of this suit to the court.

LORENZO A. BAILEY, *Trustee*.

DISTRICT OF COLUMBIA, ss:

26 I, Lorenzo A. Bailey, Trustee, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those therein stated upon information and belief I believe to be true.

LORENZO A. BAILEY.

Subscribed and sworn to before me this 31st day of March, 1909.

J. R. YOUNG, *Clk*,  
By F. E. CUNNINGHAM,  
*Ass't Clk*.

*Answer to Rule.*

Filed Apr. 2, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28416.

ABE KING, Complainant,

vs.

MICHAEL HARRINGTON, LORENZO A. BAILEY, Trustee, Defendants.

Separate Answer of Michael Harrington to the Rule to Show Cause  
Filed Herein March 24th, 1909.

This defendant, now and at all times hereafter saving to himself any and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

1. This respondent admits that he is a citizen of the United  
27 States and a resident of the District of Columbia as set forth in the first paragraph of the complainant's bill.

2. Answering the third paragraph of the said bill of complaint, this respondent admits that the lease for premises known as No. 200 B Street, Northwest in the City of Washington, District of Columbia, is now and has been since July 1st, 1907, in his name for and on behalf of the partnership which will be more fully and at large set out hereafter.

This respondent however denies that he is the proprietor of the bar room business and the hotel business conducted in the said premises, but that he admits for reasons hereinafter fully set forth, the excise and hotel licenses for conducting the business in the said premises now stand in his name, and said licenses have stood in his name since to wit: the first day of July, 1907, when the partnership hereinafter set forth was established.

3. Answering the fourth paragraph of the said bill of complaint as required by the rule herein, this respondent denies that on the 31st day of October, 1908, he was indebted to the complainant in the sum of Seventeen hundred dollars as set out in the fourth paragraph of the said bill or that he was indebted to the said complainant in the sum of eight hundred dollars as in said paragraph set forth or that he was indebted to the said complainant in the sum of four hundred and eight dollars and ninety eight cents on open account, as in paragraph set forth or that he was indebted to the said complainant in the sum of eight hundred dollars for cash loaned to him by the complainant as in said paragraph set forth, or that  
28 he was indebted to the said complainant in the sum of twenty five dollars as in said paragraph set out; or that he is indebted to the said complainant in the sum of three thousand



eight hundred and fourteen dollars and ninety eight cents as averred by the complainant in the said fourth paragraph. But this respondent declares the fact to be that on or about the first day of July, 1907, this respondent desiring to purchase the stock and fixtures, lease, etc., not including the licenses of the hotel business formerly conducted in the said premises No. 200 B Street, Northwest, approached the said complainant for the purpose of raising, if possible, the money necessary to purchase the said business, the license to the said place having been refused by the Excise Board of the District of Columbia to the former occupant. That the firm of Records and Goldsboro, wholesale dealers in wines and liquors, with headquarters in the City of Baltimore, at that time held a deed of trust chattels upon what there was then in the said premises, amounting to, to wit, the sum of seventeen hundred dollars, together with an open account amounting to four hundred and eighty nine dollars and ninety eight cents, all of which has been placed upon the chattels for the said premises, lease, etc., by the former owner of the said chattels, but instead of the said Abe King agreeing to lend to this respondent the money aforesaid or whatever was necessary to purchase the said business, the said King proposes that this respondent and the complainant enter into a partnership for the conduct of the said business, and that this respondent should take the lease and the licenses in his name and conduct the business, so far as the management thereof was concerned, being entitled to fair compensation for his services in that behalf and that he, King, would

29 furnish the necessary money to conduct the said business, but could not be known publicly as a partner therein for the reason that he occupied an official position with a brewery doing business in the District of Columbia which would interfere with the business to be conducted by this partnership, and in compliance with that agreement, the said King was to invest the sum of fifteen hundred dollars, and it was understood and agreed that this respondent should put the receipts from day to day in a bank to be selected by said King, and by the said King alone checked out, for the purpose of paying the bills and obligations of the said firm, and in other words, it was agreed between the complainant and this respondent that all money matters would be attended to, managed and arranged by the said King as the silent partner of the said business, the bank account to be kept in the name of Harrington & Company, and checks to be signed in that manner by the said complainant. In compliance with the agreement the complainant herein said it was necessary for this respondent in order that the complainant might raise the money which he had agreed to put in, to give to the complainant this respondent's note in the sum of fifteen hundred dollars which this respondent did, with which the said complainant was to raise the money according to the agreement herein and that the complainant would take care of the said note and pay the same, this being the sum that was to be deposited in the firm as capital by the said complainant, in lieu of this respondent procuring the opportunity to purchase the said business and in lieu of this respondent

allowing the use of his name in the matter of licenses and in  
30 the matter of the lease for the said premises, it being understood and agreed at the same time that this respondent, being compelled to act publicly as the sole proprietor, would have to sign all deeds of trust chattels to secure to the firm of Records and Goldsboro the amount of money due to them on their said chattels trust, whereby this respondent, on behalf of the said firm which included this respondent and the complainant, executed in favor of the said firm of Records and Goldsboro a deed of trust chattels securing to them the money due them at the time the complainant and this respondent bought the said business, which amounted to about eighteen hundred dollars and an open account. This respondent further says that the complainant acting as a member of the firm of Harrington & Company, instead of placing to the credit of the firm fifteen hundred dollars, as he had agreed to do upon the note made by this respondent for that purpose upon his representations to the respondent, the complainant only deposited the sum of one thousand dollars, and that, instead of the complainant paying the said one thousand dollars, the interest and some of the principal as was paid from time to time out of his own funds as agreed upon between this respondent and the complainant, this respondent is informed, believes and therefore avers that the said complainant having full charge of the disbursements of the partnership funds, paid such curtails and such interest as was paid from the said one thousand dollars out of the gross proceeds deposited by this respondent in the bank for the ordinary expenses of the conduct of the said business. This respondent says that on or about the 31st day of  
31 October, 1908, the said firm of Records and Goldsboro, wishing to discontinue their business relations of every kind in the District of Columbia, offered to liquidate their debt against the firm of Harrington & Company which they held by way of deed of trust chattels and notes of this respondent as hereinbefore set forth, offered to sell the said notes and all their claims against the partnership for the sum of one thousand dollars, and the said King, the complainant herein, acting for and on behalf of the said partnership, purchased the claim of the said Records and Goldsboro amounting to nearly three thousand dollars in all for the benefit of the firm of Harrington & Company, of which the said King is a partner, and induced this respondent, for the purpose of raising the money with which to pay the said Records and Goldsboro the one thousand dollars aforesaid to execute certain notes and deeds of trust securing the same upon the representation that it was necessary in order to finance the affair for him to have these notes and deeds of trust in hand, this respondent having implicit faith and confidence in the complainant, and knowing his superior skill as a financier, and without further inquiry as to his object and motives, executed the said deeds of trust and promissory notes and continued as formerly to deposit in the banks the gross proceeds from the said business which this respondent was conducting for and on behalf of the said King and this respondent. That during the progress of the said business the said King, from time to time, ordered goods to



be sent to the said partnership business without consulting this respondent, such as meats and provisions, wines and liquors, and as soon as the business was organized, to wit, July, 1907, the  
 32 said King sent to the said partnership business an iron safe to be used by the said partnership in the conduct of its hotel business, all of which was done without the knowledge or consent of this respondent, but done entirely upon the motion of the said King, acting upon his authority as a member of the firm of Harrington & Company.

From the first day of July 1907, to the first day of March, 1909, the said complainant having had absolute control over the receipts of the said business after this respondent had deposited the same in the banks indicated by the complainant, the said complainant had failed and refused to render an account to this respondent of the manner and form of his expenditure or to whom and for what purposes the money had been disbursed, except as to the rent which the complainant always insisted upon giving a check to this respondent, as he stated that he did not wish to have it known that he had anything whatever to do with the business so far as the landlord was concerned. And notwithstanding the fact that your respondent had frequently requested the complainant to render an account of his stewardship, particularly as the complainant had informed this respondent that he had on several occasions applied the funds of the partnership to his own use which he promised to restore and especially since the complainant frequently asked this respondent to sign or endorse notes for the personal use of the complainant this respondent thought that it was time he should have an accounting and a statement of the financial condition of the business, and when, on to wit, the 1st day of March 1909 the complainant had failed and refused to render such an account this respondent upon advise of  
 33 counsel, discontinued depositing the money from the business in the bank designated by the complainant, to be drawn out by him alone, without consulting this respondent, and this respondent has since that date refused to deposit the money in the banks subject to the order of the complainant for the reasons stated. And notwithstanding the fact that your respondent has since the first day of March, 1909 frequently requested the complainant to render an account of the money deposited to his credit as aforesaid this respondent has never received such an accounting, has never had an opportunity to go over the accounts of the firm and did not have any idea for what the money was used until the filing of this suit, when the alleged account of the complainant was presented to him in a copy of the original bill filed herein which said account is not true and correct in any matter whatever, as the said complainant has charged to the said partnership money paid out of the said partnership, which should have been paid by the said complainant as his share of the capital to the business.

This respondent therefor- again says that he is not indebted to the said King in any sum whatever, and that the said partnership is not indebted to the said King in any sum whatever, for the reason that this respondent as a member of the firm has deposited in the Com-

mercial National Bank, and finally in the American National Bank sufficient funds with which to pay any advances made by the said King in the purchase of the Records & Goldsboro claim, and any other sum that he may allege he loaned to this partnership, although if he did loan to this partnership any funds other than the money advanced for the purpose of buying the Records & Goldsboro claims

he did so without the knowledge or consent of this respondent  
34 and without any necessity therefor. And that if the funds

of this partnership had been properly applied and used by the said King, the said partnership would now have in the American National Bank, its last depository, a large sum of money to its credit, instead of the dollar and odd cents now alleged by the said King to be to the credit of the said partnership. Affiant further says that the said King is not only a silent partner and the manager of the finances of this co-partnership, but that he is, upon information given to this respondent, the silent partner and the manager of the finances of two or three other wholesale and retail liquor establishments in the District of Columbia, and that the alleged account filed herein shows that the said King has patronized at least two of the concerns with which he is connected in purchasing goods for this partnership, and on other occasions has drawn from the goods on hand in this partnership for the use of another establishment in which he is interested, viz: The Capital Liquor Company of the District of Columbia. And this respondent charges that the filing of this bill in the manner and form in which it is filed is but the carrying out of a threat made by the said King just before the inauguration, to the effect that this business would be conducted until after the fourth of March, at which time he would throw this respondent out on the grounds that he owed him a large sum of money, and take the business over under a foreclosure sale to satisfy his alleged mortgage, which is but an after consideration, and a scheme to deprive this respondent of what justly  
35 belongs to him and his fair share of the said business and in violation of the rights of this respondent and of any creditors of the said co-partnership.

4. Answering the fifth paragraph of the bill of complaint, this respondent denies that he has paid any sum whatever on account of the sum of three thousand eight hundred and fourteen dollars and ninety eight cents for the said King, nor was he cognizant of the fact that the said King ever understood him to be indebted to him in the sum of three thousand eight hundred and fourteen dollars and ninety eight cents or any other sum whatsoever until the 12th day of March 1909 when the said note was presented to him for payment, which he refused to pay for the reason that not only was this respondent not indebted to the said King in the said amount, nor was the partnership of which the said King is a member indebted to the said King in the said amount, nor in any sum whatsoever.

5. This respondent admits that he signed the deed of trust as aforesaid, and refers to his answer to paragraph four as the reason for signing the same.

6. Answering the seventh paragraph of the said bill of complaint, this respondent admits the terms and conditions of the said deed of trust, and again says that he signed the said deed of trust with the



conditions aforesaid at the special instance and request of his partner King, so that the said King might be able to raise upon the note secured by the said deed of trust, the necessary one thousand dollars, which was used to purchase the claims of Records and Goldsboro, and that it was made for the increase, such as made up by the said King

36 at his request for the reason that it would show the assets of the co-partnership, and their value to be more valuable and permit him to more readily raise the said money to purchase the said Records and Goldsboro claims. That in depositing the money as aforesaid in the banks aforesaid to the credit of Harrington & Company to be drawn out by the said King, he did not do so for the purpose of complying with the terms *with the terms* of the deed of trust aforesaid for the reason that the said deposits began on or about the first day of July, 1907, nearly sixteen months before the said King procured from this respondent, acting for the partnership, the said deed of trust wherein the conditions as set forth in paragraph seven are to be found, but that the said money was deposited in compliance with the partnership agreement.

7. Answering the eighth paragraph of the said bill of complaint, and the rule to show cause, this respondent denies that at the time the said deed of trust was signed and executed by this respondent, acting for and on behalf of the partnership aforesaid, that this respondent had any conversation with the said King with reference to depositing the money in the banks, but that according to the terms of the partnership he continued to do so, and therefore it was absolutely unnecessary to make such a verbal agreement fourteen months after the partnership agreement was made and while the agreement made at that time was being lived up to religiously by this respondent.

8. Answering the eighth paragraph of the said bill of complaint this respondent admits that he authorized his attorneys to notify the said King that he would not continue to deposit the moneys in bank  
37 as had been the custom and according to the agreement until after he, the said King had rendered an account of the moneys already deposited therein by this respondent as a result of the partnership business. And this respondent further denies that the said alleged accounting as annexed to the original bill herein as an exhibit, is a true account of the partnership affairs of the firm of Harrington & Company, and this respondent acting upon his rights as a partner of the firm of Harrington & Company, demands that the said complainant produce in this court the vouchers upon which the said disbursements were made, the original checks used in withdrawing the money from the said banks and the stub books from which the checks were taken, and such other information as to the financial affairs of the partnership as he has in his possession.

9. Answering the tenth paragraph of the said bill of complaint, this respondent denies that he is wholly insolvent and denies that he has incurred large indebtedness in and about said business, and denies that the rent for the said premises is not paid, but avers the fact to be that out of the proceeds retained by him since the first day of March, he has paid the rent of the said premises for the current month and such other accounts as he has contracted during that period. He admits that he has received sums of money but by no

means large since the first day of March 1909, as a result of the said business, and admits that he has not deposited the same according to the agreement of the co-partnership, for the reasons stated, viz: that he believed then and still believes that the funds of the said co-partnership committed to the sole order of the said complainant was being misapplied by the said complainant and used by him for his own personal ends, instead of discharging the debts and obligations of the partnership of which he is a member. Answering further the tenth paragraph of the said bill this respondent says that if the said business is not solvent it has been solely the fault of the complainant, whose business as the financial partner in the firm was to look after and to attend to all such matters of which he claimed to have exceptional knowledge and facilities for attention. This respondent further says that there is no need for a receiver, that to appoint a receiver at this time would be in violation of the rights of this respondent as the said King has received from the said partnership business considerably more than his share of the said business in the manner aforesaid and that this respondent is perfectly willing and ready to account for the receipts held by him, and that upon a proper accounting between this respondent and the complainant as partners and an appraisalment of the business it will be found that the complainant has received a sum far in excess of the value of his interest in the business and that to appoint a receiver will destroy that which has been kept alive and fostered and built up solely by the energy of this respondent, notwithstanding the fact that the said silent partner King has failed to keep his end of the said contract, but has appropriated money to the payment of an alleged suit by the respondent which he has sought to pay and did pay out of the partnership funds.

10. This respondent answering the thirteenth paragraph of the said bill of complaint denies that either he or the firm of Harrington & Company of which the complainant is a member is indebted to the said complainant in the sum of three thousand nine hundred and sixty seven dollars and two cents or any other sum whatsoever. Answering further the said bill of complaint this respondent says that during all the time of the continuance of this partnership from to wit, the first day of July, 1907 to the first day of March, 1909,—has not received one cent as compensation or remuneration for his services as manager of the said business but has deposited the said money entire as the same has come into his hands as the receipts of the said business, and that the said partnership, according to the agreement made with the said King, on or about the first day of July, 1907, is indebted to him for services as manager of the said business as this respondent has given the said business all his time, attention, and skill whereas, the said King has given the said business but little of his time outside of the time necessary to discount the notes of this respondent for the use of the said business, and the time used in financing the said business according to the agreement made between the said complainant and this respondent as co-partners, and that the said King is entitled to receive one half



of the net profits from the said business whenever an accounting is made to that end, while the other half of the net profits are due and payable to this respondent. That the said business is solvent and a proper accounting from the said complainant as a co-partner will give to the said partnership sufficient money to continue the business without the necessity of being at all hampered or embarrassed in any way. And this respondent having fully answered, prays that he be hence dismissed with his reasonable costs.

MICHAEL HARRINGTON.

DARR, PEYSER & TAYLOR,  
*Sols. for Defendant.*

40 I, Michael Harrington, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated of my own personal knowledge are true, and those stated upon information and belief, I belief to be true.

MICHAEL HARRINGTON.

Subscribed and sworn to before me this 31st day of March, 1909.

[SEAL.]

RICHARD A. CURTIN,  
*Notary Public, D. C.*

*Appearance of Crandal Mackey for Complainant.*

Filed Apr. 15, 1909.

In the Supreme Court of the District of Columbia.

No. 28416. In Equity.

ABE KING, Complainant,  
vs.

MICHAEL HARRINGTON et al., Defendants.

The Clerk will please enter my appearance as Solicitor for the Complainant.

CRANDAL MACKEY,  
*Sol. for Complainant.*

The Clerk will please enter my withdrawal as solicitor for complainant.

LORENZO A. BAILEY.

41

*Replication to Answer of Def't Harrington.*

Filed Apr. 15, 1909.

In the Supreme Court of the District of Columbia.

No. 28416. In Equity.

ABE KING, Complainant,

vs.

MICHAEL HARRINGTON et al., Defendants.

The complainant hereby joins issue with the defendant, Michael Harrington.

CRANDAL MACKEY,

*Solicitor for Complainant.**Amendment to Answer of M. Harrington.*

Filed Apr. 16, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28416.

ABE KING

vs.

MICHAEL HARRINGTON ET AL.

This respondent, by leave of Court first had and obtained, hereby amends his answer heretofore filed in this cause by adding thereto the following:

This respondent further states that by reason of misunderstandings and differences of opinion that have arisen between him and the said Abe King in the conduct and management of the said liquor  
42 business at Number 200 B Street, Northwest, and, in view of the fact that the funds belonging to the said co-partnership are subject to be withdrawn only upon the check signed by the said Abe King; and because of the matters and things hereinbefore set forth in this respondent's answer to the rule to show cause, he believes it to be practically impossible to further continue in the conduct and management of the said business; and that it would be to the interest of both parties to this cause as well as the creditors of the said firm, to have the said co-partnership dissolved and the business wound up under the direction of this Honorable Court, and to this end he respectfully prays as follows:

1st. That an order be passed herein terminating and dissolving the co-partnership heretofore existing between the complainant and defendant with respect to the business described and mentioned in the

pleadings herein and located at Number 200 B Street, N. W., in the City of Washington, District of Columbia.

2nd. That this Honorable Court appoint a suitable person or persons to forthwith take charge and possession of the assets belonging to the said business, and to conduct, manage and dispose of the same under the order and direction of this Court.

3rd. That upon a sale of the said assets, this cause *being* referred to the Auditor of this Court to state and report all necessary accounts in the premises.

4th. That after the payment of all the debts due and owing by the said co-partnership, the balance of the funds received  
43 from the sale of the said assets, if any, be equally divided between the complainant and this defendant.

And for such other and further relief as the nature of the case may require.

MICHAEL HARRINGTON.

DISTRICT OF COLUMBIA, ss:

Michael Harrington, being first duly sworn, deposes and says that he has read the foregoing amendment to his answer to rule to show cause, and knows the contents thereof; that the matters and things therein stated upon personal knowledge are true, and those therein stated upon information and belief he believes to be true.

MICHAEL HARRINGTON.

Subscribed and sworn to before me this fifteenth day of April, A. D., 1909.

[SEAL.]

RICHARD A. CURTIN,  
*Notary Public, D. C.*

44

*Cross-Bill.*

Filed Apr. 16, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28416.

MICHAEL HARRINGTON

VS.

ABE KING.

To the Supreme Court of the District of Columbia, holding an Equity Court, the cross-complainant respectfully states as follows:

1. That he is a citizen of the United States, and a resident of the District of Columbia, and brings this suit in his own right.

2. The cross-defendant, Abe King, is a citizen of the United States and a resident of the District of Columbia, and is sued in his own right.

3. That therefore, to wit, on the 5th day of March, 1907, the cross-complainant and cross-defendant entered into a co-partnership for



the purpose of owning and conducting the hotel and liquor business at No. 200 B Street, Northwest, in the City of Washington, District of Columbia.

4. Cross-complainant avers, that he was to devote his time, skill, experience and labor to the said business, while the said King was to finance the undertaking and attend to the financial affairs connected with said business.

5. Thereafter, to wit, on the 31st day of October, 1908, the said firm being indebted to the firm of Records & Goldsborough in  
45 the sum of three thousand the said King secured the cancellation of said indebtedness upon the payment of One Thousand Dollars, and your cross-complainant avers that the said transaction inured to the benefit of said co-partnership.

6. To obtain the funds with which to purchase the said Records & Goldsborough account, the said King caused this complainant to execute a certain promissory note for the sum of \$3814.98, secured by a certain deed of trust upon the assets of said business; and this complainant avers that said note and trust represent only an indebtedness of said One Thousand Dollars.

7. All of the funds arising from the said business were deposited in bank to the credit of the firm of Harrington & Co., subject to the check of said King; and complainant is unable to withdraw any of such funds for the conduct of the said business.

8. Serious differences and disputes have arisen between this cross-complainant and said King in regard to the arrangement existing between and with respect to the conduct of said business, as a result of which the same cannot longer be continued by the said co-partnership; and this cross-complainant is entitled to have the said copartnership dissolved and terminated by the order of this Honorable Court, and the proceeds to be derived from the sale of said assets, after the payment of debts and expenses, divided between this cross-complainant and said defendant.

Wherefore, the premises considered, cross-complainant respectfully prays:

1. That process issue herein requiring said cross-defendant  
46 to appear and answer the allegations of this cross bill, but not under oath, answer under oath being hereby expressly waived.

2. That the copartnership heretofore existing between the said parties with respect to the business described herein be dissolved and terminated by order of this Court.

3. That the assets of said copartnership be sold by officers appointed by this Court and the balance of the proceeds thereof, after the payment of expenses and debts, be divided equally between the parties hereto.

4. That this cause be referred to the Auditor to state all proper and necessary accounts in the premises.

5. And for such other and further relief as the nature of the case may require.

The defendant to this bill is Abe King.

MICHAEL HARRINGTON.

DISTRICT OF COLUMBIA, ss:

Michael Harrington being first duly sworn, deposes and says that he has read the foregoing bill of complaint by him subscribed, and knows the contents thereof; that the facts therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

MICHAEL HARRINGTON.

Subscribed and sworn to before me this 16th day of April, A. D. 1909.

[SEAL.]

RICHARD A. CURTIN,  
*Notary Public, D. C.*

DARR, PEYSER & TAYLOR,  
*Solicitors for Cross-complainant.*

47

*Order Appointing Receivers.*

Filed Apr. 19, 1909.

In the Supreme Court of the District of Columbia.

In Equity. No. 28416.

ABE KING

VS.

MICHAEL HARRINGTON et al.

This cause coming on to be heard upon the issue whether or not the plaintiff and defendant were and are partners in the conduct of the business conducted at No. 200 B Street, Northwest, known as the Census Hotel, and whether or not the Plaintiff and Defendant owned said business as partners, the testimony of the witnesses having been produced in open Court by request of Counsel for both parties, and said witnesses examined on behalf of the respective parties to this cause; and being argued by counsel and duly considered by the Court; the Court finds that the business described in the pleadings, conducted at No. 200 B Street, Northwest, in the city of Washington, District of Columbia, since the Fifth day of March, 1907, has been, and now is, owned by the complainant Abe King and the defendant Michael Harrington as copartners, and that they are now and since said date have been partners therein; and it appearing from the answer as amended and the cross-bill of Michael Harrington, and the testimony in support thereof, that misunderstandings and disagreements have arisen between the said parties in the conduct of said business;

It is by the Court this 19th day of April, 1909, ordered  
48 that Julius I. Peyser and William F. Columbus, who are selected by the respective parties, be, and they are hereby appointed Receivers to take charge, possession and control of all assets belonging to said co-partnership, including the lease of prem-



ises No. 200 B Street, Northwest, the license granted by the Excise Board of the District of Columbia to Michael Harrington to conduct the liquor business in and upon said premises, and the stock in trade contained therein, with power and authority to said Receivers to manage and conduct said business as a going concern until the same can be sold as a going concern, and said Receivers are directed forthwith to take steps to sell the same at public or private sale, and to report to the Court which method of sale will in their judgment be to the best advantage.

Said Receivers, before taking possession of said chattels shall give their several, or joint and several bond herein, in the penal sum of Five Thousand Dollars, with surety or sureties to be approved by the Court, conditioned for the faithful performance of the duties hereby entrusted to them.

The Court further finds that the defendant is entitled to an accounting against the plaintiff, and that the plaintiff is likewise entitled to an accounting against the defendant respecting the affairs of the said partnership; and the cause is referred to the Auditor with directions to hear and take evidence and to state an account between the said partners as to the affairs of said partnership and to report the same and the evidence so taken to the Court. And the cause is continued to await the same, and the further order of the Court thereupon.

WRIGHT.

49

*Motion to Vacate Decree.*

Filed Apr. 22, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28416.

ABE KING, Complainant,

vs.

MICHAEL HARRINGTON et al., Defendants.

Comes now the complainant by Crandal Mackey, his solicitor and moves the Court to set aside and vacate the decree entered in the above entitled cause on the 19th day of April, A. D., 1909, except so much as appoints Receivers, and as grounds for this motion complainant states the following:

1st. Because said decree is a final decree and the Court has no power or jurisdiction to enter said decree upon a rule to show cause why a receiver should not be appointed as prayed for in the bill.

2nd. Because said decree purports to determine the complainant and the defendant Harrington to be co-partners, although no matter having any reference to a partnership was contained either in the bill or the rule to show cause granted thereon.

3rd. Because upon the bill of complaint and the rule to show cause the jurisdiction and power of the Court were limited to discharging the rule or granting the prayer for a receiver.

4th. Because said cause was not set down for hearing on  
50 bill and answer as shown by the replication filed by the com-  
plainant, and because complainant upon filing of the answer  
setting up new matter and the existence of a partnership became  
entitled under the rules of chancery practice and the rules of this  
Court to have his testimony and that of the defendant taken down in  
writing after due notice, before an examiner of this court and to  
have the cause calendared and heard as other chancery causes.

5th. Because said decree entered at that time upon the state of  
the pleadings and record was not made in accordance with the 64th  
and 65th rules of this Court.

6th. Because said decree as shown by the Record is a final decree  
entered upon a rule to show cause why a receiver should not be  
appointed.

7th. Because said decree purports to be a final decree granted upon  
relief asked by the defendant Harrington in a cross bill which the  
record shows had not been answered and which in fact had not been  
seen by the complainant or his solicitor and which complainant did  
not even have an opportunity to answer, and which under the rules  
of court the complainant has still a right to answer at any time  
within the next succeeding rule day.

8th. Because said decree is in violation of Article V of the amend-  
ments to the constitution of the United States and deprives the com-  
plainant of his property without due process of law.

9th. Because said decree recites that counsel for complainant and  
defendant had requested the court to determine the matters therein  
set forth while counsel for complainant never made such  
51 request, but understood that the only question to be deter-  
mined was whether or not a receiver should be appointed upon  
the averments of the bill and the answer to the rule to show cause  
and the testimony taken in open Court.

CRANDAL MACKEY,  
*Solicitor for Complainant.*

To Messrs. Darr, Peyser & Taylor:

Take notice that I will call the above motion to the attention of  
the Justice presiding in Equity Court No. 2 on Friday April 23,  
1909 at 10 o'clock A. M. or as soon thereafter as counsel can be  
heard.

CRANDAL MACKEY,  
*Solicitor for Complainant.*

DISTRICT OF COLUMBIA, ss.:

Lorenzo A. Bailey, being first duly sworn, says upon his oath as  
follows:

I am a member of the Bar of the Supreme Court of the District of  
Columbia, and in the Equity suit No. 28416 now pending in said  
court wherein Abe King is named as complainant and Michael Har-  
rington and myself as trustee, are named as defendants, I drafted  
and filed the bill of complaint and obtained the rule to show cause  
returnable March 26, 1909. On Tuesday, April 13th, 1909, at the



hearing upon said rule before Mr. Justice Wright I appeared on behalf of the complainant. I then stated to the court the substance of the bill of complaint and the defendant Harrington's answer to the rule was by his counsel read to the court and the sufficiency of

52 the matters alleged in the answer under the rule to show cause was argued by counsel after which Mr. Justice Wright stated his willingness to hear oral testimony in open court upon the question as to whether or not a partnership existed between the complainant King and the defendant Harrington as alleged in Harrington's answer to the rule. To this counsel for both parties consented and Thursday, April 15, 1909, was fixed by the court as the time for such further hearing on the rule. Thereupon in consequence of the fact that I might be required as a witness to testify concerning the alleged co-partnership the said King and I requested Mr. Crandal Mackey to appear for said King which was done and accordingly on the morning of April 15th, before the further hearing began Mr. Mackey entered his appearance for the complainant and I filed my withdrawal as solicitor of record for the complainant. Thereupon on the latter date witnesses for the said King and Harrington, respectively, were produced sworn and examined in open court before Mr. Justice Wright, I being one of the witnesses so examined on behalf of said King. Thereupon at the close of the testimony the court took the matter under advisement and indicated a disposition to appoint a receiver if the defendant Harrington would by amendment of his answer ask for it thereupon the Court postponed further action in the matter until next morning Friday, April 16th, at which time counsel for Harrington filed the amended answer and a cross bill and Mr. Darr of counsel for Harrington then presented to the court a draft prepared by him of the decree which he desired the court to make, to which decree Mr. Mackey then and there objected and the court of its own motion then altered. Mr. Mackey and I at that time urged upon Mr. Justice Wright that

53 the hearing was merely upon the rule to show cause and not upon the bill and answer or other pleadings and that the decree should not be in form or effect a final adjudication of the issue as to whether or not the co-partnership existed. I never understood that the testimony of witnesses in open court was being taken for the purpose of a final adjudication upon any issue whatsoever but I understood it was merely a continuation of the hearing upon the rule to show cause. I never requested the court to determine any issue in this matter except as to whether a receiver should be appointed or the rule discharged, nor entered into any stipulation in the premises.

LORENZO A. BAILEY.

Subscribed and sworn to before me this 20th day of April, A. D. 1909.

[SEAL.]

WM. F. COLUMBUS,  
*Notary Public, D. C.*



In the Supreme Court of the District of Columbia.

ABE KING  
vs.  
HARRINGTON et al.

DISTRICT OF COLUMBIA, *To wit:*

I, Crandal Mackey, upon oath say; that I am an attorney at law, practicing before the Courts of the District of Columbia, and was on Thursday, April 15th, 1909, *was* requested by the complainant in the above cause, and by L. A. Bailey, Esq., his solicitor, to  
54 represent the complainant in the above suit, as owing to the character of the answer filed by the defendant Harrington, to the rule to show cause, it had become necessary for him Bailey, to withdraw from the case as solicitor and become a witness for the complainant; that I was informed by said Bailey that a hearing would take place on the following day before *the* Justice Wright, upon the rule to show cause as the Justice desired to hear the testimony of witnesses in open Court; that I received the bill of complaint and answer in the office of Bailey, the said answer beginning only as an answer to the rule to show cause why a receiver should not be appointed, but further appearing to be an answer to the entire bill, and that I inquired of said Bailey as to why a receiver had not been appointed upon the failure of the answer to traverse certain allegations of the bill and said Bailey replied that Justice Wright was not disposed to appoint a receiver and would discharge the rule if he came to the conclusion upon the oral testimony that the averment in the answer as to the existence of a partnership were true; that on Friday, April 16th, 1909, I went to the Court Room of Justice Wright with the understanding, and for no other purpose than to examine the witnesses and argue upon the rule to show cause and, before any witnesses were examined I inquired of the Court if paragraph 10 of the bill of complaint and the 9th paragraph of the answer to the rule were not sufficient to warrant the appointment of a receiver, to which inquiry the Court replied, "If you think that why don't you set down the cause for hearing on bill and answer," and to that I replied that "that would admit of the existence  
55 of a partnership as set up in the answer;" that I had filed the general replication to the defendant's answer and had not asked to have the case heard on bill and answer, and that if I had ever had such an idea it would have been dispelled by the answer of the Court above quoted, that I believed throughout said hearing that the sole question was whether or not a receiver should be appointed, and at the conclusion of the oral testimony, I argued solely upon the point that even though the Court believed that there was a partnership between the parties, the rule should not be discharged, which I mention as showing that I had no idea that any matter was under consideration except the question of the appointment of a receiver upon the rule to show cause; that on the day following said hearing counsel for defendant filed a cross bill setting up

the existence of a partnership and praying for the appointment of a receiver and an accounting and that no opportunity was given to answer said cross bill and though complainant is still entitled by the rules of Court to answer the same, a final decree was entered by the Court to which I as counsel for complainant entered my respectful protest, that I had never requested the Court to hear said suit upon bill and answer, nor entered into any stipulation, or made any request of the Court, or said or did anything with the intention of leading the Court to believe that said hearing was other than upon a rule to show cause or that anything was to be done upon said hearing, except to discharge the rule, or appoint a receiver.

CRANDAL MACKEY.

Subscribed and sworn to before me this 20th day of April, 1909.

[SEAL.]

WM. F. COLUMBUS,

*Notary Public, D. C.*

56

*Affidavit of Milton Strasburger.*

Filed Apr. 30, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 28416.

ABE KING

VS.

MICHAEL HARRINGTON.

DISTRICT OF COLUMBIA, ss:

Milton Strasburger, being first duly sworn, deposes and says that he is one of the solicitors for the defendant Michael Harrington; that he was not present in Court at the time of the return to the rule to show cause, but appeared for the first time at the oral hearing before Mr. Justice Wright, and participated in the examination of witnesses produced at said trial. The issue raised by the bill of complaint and the answer of Harrington, was whether King was a creditor or a partner of the firm of Harrington & Company, and it was to said issue that the entire inquiry was addressed. The complainant was examined as a witness on his own behalf and gave testimony tending to show that he was a creditor of Harrington and not a partner. Thereupon Harrington was examined and testified that a co-partnership had existed between him and King in the conduct of the Census Hotel since the fifth day of March, 1907. Other witnesses were produced on behalf of Harrington in support of the said contention. At the close of the taking of testimony, counsel for Harrington suggested that they were willing to submit the case without argument. Mr. Mackey stated that he desired to say a few words, and thereupon, addressed the Court. Toward the close of his argument he stated that whether the

57



partnership existed or not it was alleged in the bill that the assets were being wasted, and therefore, the complainant was entitled to a receiver. The Court stated that the bill was framed upon the theory that King was a creditor, and therefore, if he found the answer of Harrington to be true, he would be unable to appoint a receiver upon the pleadings then filed. Affiant then arose and stated to the Court that if he should be of the opinion that a partnership existed and that fact was once determined, there would be no objection on the part of Harrington to having a receiver appointed for the protection of all the parties, including the creditors of the firm. He further added that he would file an amendment to the answer of Harrington requesting the appointment of a receiver. On the morning following, he presented said amendment, and in the presence of counsel for the complainant, asked leave of the Court to file the same, which leave was granted without objection. The Court thereupon rendered an opinion in which he found that a co-partnership existed between King and Harrington and had so existed from the time that the business was begun under the name of Harrington & Company.

Shortly afterward affiant presented to Mr. Bailey, representing the complainant, a draft of an order making the appointment of receivers to take charge of the assets belonging to the firm composed of King and Harrington. Mr. Bailey made no objection to said order and the same was about to be presented to the Court for signature when Mr. Mackey came into the Court room and objected to that portion of the order which recognized and set forth the existence of the co-partnership. Subsequently the order was modified by the Court and signed.

All of counsel agreed to suggest the appointment of Messrs. Peyser and Columbus as receivers of the said Hotel business, and it was further agreed to suggest that the bond be fixed in the penal sum of five thousand dollars which was accordingly done.

Affiant's understanding was that the hearing in open Court was had for the purpose of determining the status or relationship existing between the said parties, i. e. whether King was a creditor or a partner of the firm of Harrington & Company, and all of the testimony was adduced for the purpose of enlightening the Court upon said inquiry.

Further affiant saith not.

MILTON STRASBURGER.

Subscribed and sworn to before me this 27th day of April, A. D. 1909.

[SEAL.]

RICHARD A. CURTIN,  
*Notary Public, D. C.*

59 In the Supreme Court of the District of Columbia.

Equity. No. 28416.

ABE KING  
VS.  
MICHAEL HARRINGTON.

DISTRICT OF COLUMBIA, ss:

Charles W. Darr, being first duly sworn, deposes and says that he is one of the solicitors for the defendant Michael Harrington and has been so employed since the service of process in the above entitled cause. Affiant states that in response to the bill of complaint and rule to show cause filed herein, he caused to be prepared and filed on behalf of the said defendant an answer denying the indebtedness set forth in the bill of complaint, and averring that the complainant, Abe King, and the defendant Michael Harrington, at the time of the filing of the bill of complaint were partners in the conduct of the business at number 200 B Street Northwest, and had been so engaged as partners in said business from the fifth day of March 1907.

Affiant was present in Court in response to the said rule to show cause. At said hearing the bill of complaint was read by Mr. Bailey, one of the defendants, and the Solicitor for the Complainant. Thereupon the answer of Harrington was read, in which he denied that he was the sole proprietor of the Census Hotel, but averred that the complainant, Abe King, was a full partner, entitled to one half of the profits and liable for one half of the losses of said business. Thereupon the Court asked Mr. Bailey whether he had attached to  
the bill of complaint any supporting affidavits with reference  
60 to Mr. King's status as a creditor. Mr. Bailey responded in the negative.

The Court then stated to the Solicitor for Complainant that in light of the pleadings he could not appoint a receiver, whereupon Mr. Bailey stated to the Court that he might take either horn of the dilemma and even if Mr. King were a partner, he would be entitled to receiver, because the bill averred that Harrington was collecting the assets and converting them to his own use, and that the assets were being wasted etc.

The Court then stated "But your bill does not ask for this relief as a partner. You have prayed for the relief on the theory that King was a creditor, and the Court cannot appoint a Receiver in the face of the answer of Harrington."

It was then suggested by Solicitor Bailey that it seemed necessary to determine the status of these parties. The Court thereupon asked Mr. Bailey how much time would be consumed in taking his testimony for the purpose of fixing Mr. King's status as a creditor, and Mr. Bailey stated to the Court, "I think I can finish it in about three days"; the quicker this is done the better for my client for the reason that every day is material, as the defendant Harrington is wasting the estate, which is covered by the complainant's deed of trust.



The Court then said, "I am inclined to do anything you wish to determine that question, and if it will facilitate the determination thereof, I will hear the testimony orally in open Court as soon as you can be ready, so that it may be determined whether Mr. King is a creditor or a partner." Mr. Bailey at once and without  
61 hesitation accepted the suggestion of the Court, and thanked the Court for his consideration. He said that would be very much better, and if the Court would follow the course suggested he could conclude the taking of his testimony in thirty minutes, in support of his contention that Mr. King was a creditor and not a partner.

Affiant likewise expressed his will-ness to have the Court hear the testimony from the oral statements of the witnesses.

At no time was it suggested or intimated that it was simply an interlocutory proceeding, but the Court distinctly stated that he would hear the testimony for the purpose of determinig finally the question as to whether a copartnership existed between the complainant and defendant Harrington. If Mr. Bailey understood that the issue as to partnership was not to be determined and adjudicated, it was not shared in by this affiant, and not based upon anything said by the Court or Counsel for either of the parties.

Upon the day fixed for the hearing the parties and witnesses appeared and were examined as to the existence or non-existence of a partnership. At the close of the testimony Mr. Mackey argued that it had been shown that King was a creditor of Harrington. He concluded by saying that in any event—even if a partnership existed—the Court should appoint a receiver.

Mr. Strasburger, who was associated in the case with affiant, arose and suggested that if it were determined that a partnership existed, then, in the interest of the creditors of the firm as well as that  
62 of the parties to this cause, there would be no objection to the appointment of a Receiver. It was then suggested by the Court that if he was satisfied of the existence of a co-partnership, he would have no authority, under the pleadings, to appoint a Receiver. Mr. Strasburger then requested the leave of the Court to file an amendment to the answer of Harrington, asking for the appointment of a Receiver in the event the Court should conclude that a co-partnership existed as set forth in the said answer. On the morning immediately following, Mr. Strasburger, in the presence of Counsel for King, presented said motion in writing and had endorsed thereon by the Court his leave to file same. No objection was made by said Counsel to the granting of said leave or to the filing of the amendment.

After the Court rendered his opinion, in which he found the existence of a co-partnership, Counsel held a conference in the hall adjacent to the Court Room and agreed that Messrs. Peyser and Columbus should be recommended to the Court as suitable persons to serve as Receivers. It was also agreed that a bond of five thousand dollars should be suggested in the premises, which was accordingly done.

The form of the order originally presented to the Court was agreed upon between Mr. Bailey and affiant, and no complaint was made

thereto until Mr. Mackey entered the Court Room. After Mr. Mackey had conferred with affiant for a few moments it was agreed to submit the order to the Court and have his objections passed and ruled upon by the Court, which was accordingly done, and which resulted in the signing of the order to which complainant's present motion is addressed.

63 And further affiant saith not.

CHAS. W. DARR.

Subscribed and sworn to before me this 29th day of April, A. D. 1909.

[SEAL.]

RICHARD A. CURTIN,  
Notary Public, D. C.

*Affidavit of Jos. Salomon.*

Filed Apr. 30, 1909.

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.

Equity. No. 28416.

ABE KING

VS.

MICHAEL HARRINGTON.

DISTRICT OF COLUMBIA, *To wit:*

Joseph Salomon being first duly sworn according to law deposes and says that he is the attorney for Straus, Gunst & Co., of Richmond, Va., which concern is the largest creditor of Harrington & Co. That he was present in Equity Court No. 2, Mr. Justice Wright presiding, when the hearing was had on the rule to show cause. That after the reading of the bill of complaint and the answer to the rule to show cause the Court announced that he could not appoint a receiver for the reason that the answer denied that said King was a creditor.

The suggestion was then made that the matter might be  
64 heard in open Court to determine whether said King was a partner as alleged in the answer or a creditor as alleged in the bill. The Court then announced that he would hear the case in open Court, as soon as possible, which suggestion Lorenzo A. Bailey, Esq., solicitor for complainant accepted. That at the time it was agreed to hear said matter in open Court it was agreed and understood by all parties that said hearing was solely for the purpose of determining whether said King was a creditor or partner, as aforesaid. The Court suggested that the hearing might as well be a hearing as on bill and answer. No one of the parties or counsel present (and they were all present in Court at the time) objected to this.

JOSEPH SALOMON.



Subscribed and sworn to before me this thirtieth day of April, 1909.

[SEAL.]

WALTER C. BALDERSTON,  
*Notary Public, D. C.*

*Affidavit of L. A. Bailey.*

Filed Apr. 30, 1909.

In the Supreme Court of the District of Columbia.

In Equity. No. 28416.

ABE KING  
vs.  
MICHAEL HARRINGTON et al.

DISTRICT OF COLUMBIA, ss:

Lorenzo A. Bailey, being first duly sworn, says upon his oath as follows:

65 I have read the affidavits of Charles W. Darr, Milton Strasburger and Joseph Salomon filed in the above entitled suit on April 30, 1909, in opposition to the complainant's motion to vacate the decree of April 19, 1909. I deny each and every allegation in said affidavits to the effect that I ever consented to the entry of any final decree in this suit. On the contrary, when Mr. Strasburger showed me the draft of a decree I reminded him that I was out of the case and he would have to see Mr. Mackey. And as to Mr. Darr's statement that I agreed with him upon the form of an order, the fact is otherwise and the truth is that when Mr. Darr showed me the form of order as prepared by him I told him it might be what the court intended but I would never consent to it.

LORENZO A. BAILEY.

Subscribed and sworn to before me this 30th day of April, 1909.

J. R. YOUNG, *Clerk*,  
By E. J. McKEE,  
*Ass't Clerk*.

*Order.*

Filed Apr. 30, 1909.

No. 28416.

KING  
vs.  
HARRINGTON.

66 This cause coming on to be heard upon the motion of the plaintiff to vacate the decree (said motion having been filed on April 22, 1909) and the court having heard and read the several affidavits filed thereupon, the court now orders spread upon the

journal a correct recitation of certain matters of fact as they transpired in open court, in the presence of the court, as follows, that is to say:

During the presentation of the original application for a receiver heard upon April 13, it appeared that the bill was opposed by the sworn answer of the defendant and was unsupported by other affidavits; whereupon the court stated to counsel for the complainant that without other proof the averments of the bill which were denied could not be found in favor of complainant; whereupon counsel for the complainant orally moved to appoint a receiver upon the bill, in view of the statements of the answer that a partnership existed; which request was at the time denied and the reasons of the court expressed. Thereafter the court inquired of counsel "Is not the only question of fact in the case, whether or not a partnership existed?" And both counsel replied in the affirmative. Whereupon the court inquired, "how long will it take you to get ready and present the evidence as to a partnership orally in open court?" and counsel answered. Both counsel expressed their desire for an oral hearing of the witnesses, and the court suggested that they agree upon a day for presenting the same, which they did, and chose April 15th. The court then stated, "let the witnesses be brought on April 15th so that the question of a partnership may be determined and settled one way or the other.

When Mr. Mackey appeared on April 15, he renewed the request, orally made on April 13 by Mr. Bailey, that on the statements  
67 of the Defendant that a partnership existed a receiver ought to be appointed, and was advised by the court that that question had already been resolved against him. The hearing on April 15, was understood and regarded by the court as a final hearing on the question of a partnership. There was no intimation to the contrary until after the question had been decided.

On April 29th at the close of the argument of pl'ff's counsel on the motion to vacate the decree, the court inquired of counsel for the complainant "Have you any witnesses on the point of a partnership other than those who have already testified during the hearing of April 15?" To which counsel for the complainant replied that they had not. In consideration of all of which it appears to the court that said motion to vacate the decree ought to be, and it is hereby overruled. Whereupon the solicitor for the complainant gave notice of appeal in open court and asked that the same be noted in the record, and also gave notice of an intention to ask the court of appeals of the District of Columbia for a special appeal. Whereupon bond for costs on appeal is fixed at \$100.

WRIGHT.

68

*Memoranda.*

May 20, 1909.—Appeal bond filed.

July 6, 1909.—Time in which to file transcript of record with the Clerk of the Court of Appeals extended to and including the 15th day of September, 1909.



69

*Docket Entries.*

Supreme Court of the District of Columbia.

No. 28416.

Parties.	Action.	Complainant's solicitor.
Abe King	For Receiver.	Crandal Mackey.
vs.		
Michael Harrington, Lorenzo		Defendant's Solicitor.
A. Bailey, Trustee.		Darr, Peyser & Taylor 1.
		p. p. No. 2.

Date.	Proceedings.	
1909, M'ch 24.	Deposit toward costs by Bailey.	
" " "	Bill, Appearance, Order, Affidavits (2) and Exhibits (6)	filed.
" " "	" Spa. to Ans. & Copy to No. 1.	
" " "	Rule returnable M'ch 26" M. 82 p. 360 copy	"
" " 25.	Spa. to Ans. returned served No. 1	"
" " 31.	Answer of def't No. 2 Jurat & appearance p. p.	"
" Ap'l 1.	Rule returned served	"
" " 2.	Answer to Rule & appearance of Darr, Peyser & Taylor for No. 1	"
" " 15.	Appearance of Crandall Mackay for Compl't order	"
" " 15.	Appearance of L. A. Bailey for Compl't withdrawn	"
" " 15.	Replication	"
" " 15.	Amended answer of def't No. 1 Fiat of Wright, J.	"
" " 16.	Additional deposit for costs by M. Strasburger	"
" " 16.	Cross Bill of def't No. 1	"
" " 17.	Spa. ad. test. of Ap'l 14 returned served (6) for def'ts	"
" " 19.	Julius I. Peyser and W. F. Columbus app't'd receivers. Bond \$5,000 (M. 83 p. 76)	"
" " 19.	Bond of Receivers \$5,000 approved	"
" " 22.	Motion of Compl't to vacate decree of April 19, Notice & Affidavits (2)	"
" " 28.	Report (1) of Receivers & Exhibit	"
" " 28.	Receivers directed to sell—M. 83 p. 83	"
" " 30.	Affi. in answer to mo. Jos. Salomon	"
" " "	" " " " " " C. W. Darr	"
" " "	" " " " " " L. A. Bailey	"

70

1909, Ap'l	30.	Special Order of Court, appeal noted, Bond \$100. M. 83 p. 89	filed.
" May	20.	Bond on appeal for \$100 approved	"
" "	25.	Petition of Elizabeth W. Whitmore Jurat & App. of S. R. Bond	"
" June	15.	Report of receivers ordered M. 83 p. 140	"
" "	17.	Add'l deposit for costs by L. A. Bailey	"
" "	18.	Report of Receivers	"
" "	29.	Motion of E. W. Whitmore for accounting	"
" "	30.	Petition of Receivers to sell property & jurat	"
" "	30.	Sale authorized M. 84 p. 177	"
" July	2.	Petition of Receivers & Exhibit	"
" "	2.	Order directing Receivers to pay rent M. 84 p. 69	"
" "	6.	Order extending time for filing transcript of record M. 84 p. 81	"
" "	30.	Report of Receivers & Vouchers 2 P'k'g's A & B	"
" Aug.	6.	Order to prepare transcript on appeal	"
" "	9.	Time to file transcript on appeal extended M. 84 p. 196	"

71 *Order to Clerk for Preparation of Transcript on Appeal.*

Filed Aug. 6, 1909.

In the Supreme Court of the District of Columbia.

In Equity. No. 28416.

ABE KING

VS.

MICHAEL HARRINGTON et al.

The Clerk will please prepare the transcript of record on appeal including therein the following, viz:

1. Bill of Complaint, with affidavits of A. Harper and Wm. M. Slater and Exhibits A. K. Nos. 1, 2, 4, and 5 filed with bill.
2. Rule to show cause, filed Mch. 24, 1909.
3. Answers of def'ts, Bailey and Harrington.
4. Precipe, filed April 15, 1909, for appearance of Mr. Mackey and withdrawal of Mr. Bailey, as solicitor for complainant.
5. Replication.
6. Defendant Harrington's amendment of answer.
7. Cross bill.
8. Order filed April 19, 1909.
9. Motion, filed April 22, 1909, to vacate, etc., with affidavits of Messrs. Bailey and Mackey filed therewith.



10. Affidavits of Messrs. Strasburger, Darr, Salomon and Bailey, and order of court, filed Apl. 30, 1909.

11. Memo. showing filing of appeal bond.

72 12. Order of July 6, 1909, extending time.

13. Copy of all docket entries in this case, showing all papers filed and all proceedings had herein.

14. This order.

CRANDAL MACKEY,  
*Solicitor for Complainant.*

73 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 72 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 28416 In Equity, wherein Abe King is Complainant and Michael Harrington and Lorenzo A. Bailey, Trustee, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of September, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2061. Abe King, appellant, vs. Michael Harrington et al. Court of Appeals, District of Columbia. Filed Sep. 14, 1909. Henry W. Hodges, clerk.